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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CHRISTOPHER M. STOUT,

11 Plaintiff,

12 v.

13 CITY OF TUKWILA, et al.,

14 Defendants.

CASE NO. C18-1687JLR

ORDER ON DEFENDANTS'
MOTION TO DISMISS AND
PLAINTIFF'S MOTION FOR
LEAVE TO AMEND

15 **I. INTRODUCTION**

16 Before the court is Defendants City of Tukwila (the "City"), Tukwila Police
17 Department (the "Police Department"), Christopher Backus, and Daniel Lindstrom's
18 (collectively, "Defendants") motion to dismiss Plaintiff Christopher Stout's complaint
19 under Federal Rule of Civil Procedure 12(b)(6). (MTD (Dkt. # 12).) Mr. Stout filed a
20 response and included a motion for leave to amend his complaint. (Resp. (Dkt. # 13).)

21 The court has reviewed the motions, the parties' briefing in support of the
22 motions, the relevant portions of the record, and the applicable law. Being fully

1 informed,¹ the court GRANTS Defendants’ motion to dismiss, GRANTS Mr. Stout’s
2 motion for leave to amend his complaint, and DISMISSES with prejudice (1) Mr. Stout’s
3 claim of intentional infliction of emotional distress (“IIED”) and (2) Mr. Stout’s claims
4 against the City and the Police Department.

5 **II. BACKGROUND**

6 Mr. Stout filed his complaint in King County Superior Court on August 3, 2018.
7 (*See* Compl. at 8.) He alleges that Defendant Christopher Backus of the Tukwila Police
8 Department forcibly arrested him at an Applebees without disclosing why he was doing
9 so. (*See id.* ¶¶ 15-31.) Mr. Stout’s complaint includes three claims against Mr. Backus
10 personally: assault, intentional infliction of emotional distress (“IIED”),² and “arrest
11 without probable cause.” (*See id.* ¶¶ 36-57.) It also includes a fourth claim alleged
12 against all Defendants for “violation of civil rights” pursuant to 42 U.S.C. § 1983. (*See*
13 *id.* (¶¶ 58-67).)

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17 ¹ Neither party requests oral argument (*see* Mot. at 1; Resp. at 1), and the court finds it
18 would not be helpful to the disposition of the motions, *see* Local Civil Rules W.D. Wash. LCR
19 7(b)(4).

20 ² Unlike Mr. Stout’s first and third claims, which specify that Mr. Stout alleges them
21 “against Defendant Officer Backus,” Mr. Stout’s IIED claim states only “as against Defendant
22 Officer.” (*See* Compl. at 5.) Also unlike Mr. Stout’s first and third claims, which include
allegations only against Mr. Backus, Mr. Stout’s IIED claim makes two references to Defendant
Daniel Lindstrom, another Tukwila Police Department officer, in the section of his complaint
devoted to his IIED claim. (*See id.* ¶¶ 44-45.) Therefore, although not entirely clear, the court
construes Mr. Stout’s complaint to assert IIED against both Mr. Backus and Mr. Lindstrom.

1 The City removed this case to federal court on November 21, 2018,³ and filed an
2 answer on November 30, 2018. (*See* Not. of Removal (Dkt. # 1) at 4; Ans. (Dkt. # 7).)
3 On September 5, 2019, Defendants filed the present motion to dismiss. (*See* Mot. at 10.)
4 Defendants ask the court to dismiss (1) Mr. Stout’s assault claim as barred by the statute
5 of limitations, (2) Mr. Stout’s IIED claim because “the allegations in the complaint do not
6 rise to the standard of outrage,” (3) the City and Police Department because “there is no
7 *Monell* liability against the City of Tukwila and its police department is not a legal entity
8 capable of being sued,” and (4) Mr. Lindstrom because Mr. Stout’s complaint “does not
9 contain any factual allegations” against him. (*See id.* at 1-2.)

10 Mr. Stout filed a roughly two-page response that includes a proposed amended
11 complaint. (*See* Resp., Ex. 1 (“Prop. Am. Compl.”).) Several portions of Mr. Stout’s
12 response are unintelligible. For example, the response includes what appears to be a
13 verbatim quote from Defendants’ motion to dismiss, which states in part “[t]he complaint
14 is devoid of any factual allegations against Officer Lindstrom.” (*See* Resp. at 1.)
15 Nevertheless, Mr. Stout appears to (1) not object to dismissing his assault claim against
16 all Defendants, and (2) seek leave to amend his complaint in the form of the proposed
17 amended complaint in an effort to cure deficiencies raised by Defendants’ motion to
18 dismiss. (*See generally* Resp.)

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21 ³ The Notice of Removal states that the City “was served with the [s]ummons and
22 [c]omplaint on October 29, 2019.” (*Id.* at 2.) Mr. Stout does not contest the date of service.
(*See generally* Dkt.)

1 In reply, Defendants oppose Mr. Stout's request for leave to amend because "[t]he
2 proposed Amended Complaint does not cure the deficiencies in the original Complaint."
3 (Reply (Dkt. # 15) at 2.) Defendants also contend that amendment would be futile, and
4 that even if it were not, Mr. Stout should not be granted leave to amend because his
5 proposed amendments are "based on evidence available to him when he filed his original
6 Complaint." (*See id.* at 2-4.)

7 III. ANALYSIS

8 A. Form of Defendants' Motion to Dismiss

9 As an initial matter, and although the distinction is largely semantic, the court
10 construes Defendants' motion not as a motion under Rule 12(b)(6), but as a motion for
11 judgment on the pleadings under Rule 12(c). Motions under Rule 12(b) "shall be made
12 before pleading if a further pleading is permitted." *See Aldabe v. Aldabe*, 616 F.2d 1089,
13 1093 (1980) (quoting Fed. R. Civ. P. 12(b)). However, if a motion to dismiss for failure
14 to state a claim "is made after the answer is filed, the court can treat the motion as one for
15 judgment on the pleadings pursuant to [Rule] 12(c)." *See id.*; *see also* Fed. R. Civ. P.
16 12(h)(2) (authorizing a motion under Rule 12(c) to raise the defense of failure to state a
17 claim, even after an answer has been filed). The case for construing a post-answer
18 motion to dismiss for failure to state a claim as a Rule 12(c) motion "is further
19 strengthened, where, as here, [the answer] include[s] the defense of failure to state a
20 claim." *See Aldabe*, 616 F.2d 1089 at 1093.

21 Here, the City filed its answer on November 30, 2018 (*see* Ans. at 6) and filed the
22 present motion to dismiss on September 5, 2019 (*see* Mot.). The City's answer includes

1 as a defense that Mr. Stout’s “complaint fails to state facts sufficient to state a claim upon
2 which relief can be granted.” (Ans. at 5.) Accordingly, the court construes Defendants’
3 motion as a Rule 12(c) motion for judgment on the pleadings.

4 **B. Rule 12 Standard**

5 The standard for dismissing claims under Rule 12(c) is “substantially identical” to
6 the Rule 12(b)(6) standard set forth in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).
7 *Chavez v. United States*, 683 F.3d 1102, 1008 (9th Cir. 2012) (internal quotation marks
8 and citation omitted); *see also Cafasso, U.S. ex rel. v. Gen. Dynamics C4 Sys., Inc.*, 637
9 F.3d 1047, 1054 n.4 (9th Cir. 2011) (“Although *Iqbal* establishes the standard for
10 deciding a Rule 12(b)(6) motion, we have said that Rule 12(c) is functionally identical to
11 Rule 12(b)(6) and that the same standard of review applies to motions brought under
12 either rule.”) (internal quotation marks and citation omitted). This is because, “under
13 both rules, a court must determine whether the facts alleged in the complaint, taken as
14 true, entitle the plaintiff to a legal remedy.” *Chavez*, 683 F.3d at 1008 (internal quotation
15 marks and citation omitted).

16 Under the Federal Rules of Civil Procedure, a complaint must contain “a short and
17 plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P.
18 8(a)(2). The purpose of this rule is to ““give the defendant fair notice of what . . . the
19 claim is and the grounds upon which it rests.”” *Bell Atl. Corp. v. Twombly*, 550 U.S. 554,
20 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). “A motion under [Rule]
21 12(b)(6) tests the formal sufficiency of the statement of claim for relief.” *Palms v.*

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1 *Austin*, C18-0838JLR, 2018 WL 4258171, at *4 (W.D. Wash. Sept. 6, 2018) (quoting
2 *Fednav Ltd. v. Sterling Int’l*, 572 F. Supp. 1268, 1270 (N.D. Cal. 1983)).

3 To survive a motion to dismiss under Rule 12(b)(6), “a complaint must contain
4 sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its
5 face.’” *Iqbal*, 556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). “A claim has facial
6 plausibility when the plaintiff pleads factual content that allows the court to draw the
7 reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* This
8 standard is “not akin to a ‘probability requirement,’ but it asks for more than a sheer
9 possibility that a defendant has acted unlawfully.” *Id.* (quoting *Twombly*, 550 U.S. at
10 556). When considering a Rule 12(b)(6) motion, the court construes the complaint in the
11 light most favorable to the nonmoving party, *Livid Holdings Ltd. v. Salomon Smith*
12 *Barney, Inc.*, 416 F.3d 940, 946 (9th Cir. 2005), and must accept all well-pleaded
13 allegations of material fact as true, *see Wyler Summit P’ship v. Turner Broad. Sys.*, 135
14 F.3d 658, 661 (9th Cir. 1998). However, the court need not accept as true a legal
15 conclusion presented as a factual allegation. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550
16 U.S. at 550).

17 Complaints removed to federal court must meet the federal pleading standards set
18 forth in *Iqbal*. *See Smith v. Bayer Corp.*, 564 U.S. 299, 304 n.2 (2011) (“[F]ederal
19 procedural rules govern a case that has been removed to federal court.”); *Harris v. City of*
20 *Seattle*, C02-2225MJP, 2003 WL 1045718, at *2 (W.D. Wash. Mar. 3, 2003) (holding
21 that in a case removed to federal court, “federal law, not state law, governs with what
22 specificity [the p]laintiff must plead in order to survive a 12(b)(6) motion”).

1 **C. Assault**

2 Defendants move to dismiss Mr. Stout’s assault claim against all defendants. (*See*
3 Mot. at 1-2.) The City contends that the applicable statute of limitations for assault
4 claims is two years. (*See id.* at 4 (citing RCW 4.16.100(1).) Mr. Stout claims he was
5 assaulted during an August 6, 2015 arrest (*see* Compl. ¶¶ 15, 36-42), he did not file this
6 lawsuit until August 3, 2018 (*see id.* at 8).

7 In response, Mr. Stout “does not object to dismissing the assault cited in the First
8 Cause of Action.” (Resp. at 3.) Mr. Stout’s position is confirmed by the fact that his
9 proposed amended complaint drops his assault claim. (*See generally* Prop. Am. Compl.)
10 Accordingly, the court GRANTS Defendants’ motion for judgment on the pleadings as to
11 Mr. Stout’s assault claim.

12 **D. Intentional Infliction of Emotional Distress**

13 Defendants contend that “[e]ven assuming all facts plead[ed] by plaintiff [are]
14 true, the alleged conduct does not rise to the requisite level to support a claim of outrage.”
15 (*See* Resp. at 7.) The court agrees.

16 The burden of proof on an IIED claim is stringent. *See Lyons v. U.S. Bank Nat.*
17 *Ass’n*, 336 P.3d 1142, 1151 (Wash. 2014) (explaining that a successful IIED claim
18 “requires proof that the conduct was so outrageous in character, and so extreme in degree,
19 as to go beyond all possible bounds of decency, and to be regarded as atrocious, and
20 utterly intolerable in a civilized community”) (internal quotations and citation omitted).
21 To prevail on an IIED claim, “a plaintiff must prove (1) outrageous and extreme conduct
22 by the defendant, (2) the defendant’s intentional or reckless disregard of the probability

1 of causing emotional distress, and (3) actual result to the plaintiff of severe emotional
2 distress.” *Steinbock v. Ferry Cty. Pub. Util. Dist. No. 1*, 269 P.3d 275, 282 (2011).

3 Mr. Stout’s allegations do not state an IIED claim. In his complaint, Mr. Stout
4 alleges, in addition to an assault, that “Defendant Officer Backus and Defendant Officer
5 Lindstrom’s [l]anguage was clearly expressed for the purpose of insulting and verbally
6 abusing an already injured Plaintiff.” (See Compl. ¶ 45.) The conduct described does not
7 rise to the level of “outrageous and extreme.” See *Steinbock*, 269 P.3d at 282. Even if it
8 did, Mr. Stout does not allege facts showing that he suffered “severe emotional distress,”
9 a necessary element of an IIED claim. See *id.*; (see generally Compl.). Accordingly, the
10 court GRANTS Defendants’ motion for judgment on the pleadings as to Mr. Stout’s IIED
11 claim.

12 **E. The City and Police Department**

13 Defendants contend that “there is no *Monell* liability against the City of Tukwila
14 and its police department is not a legal entity capable of being sued.” (Mot. at 2.) Mr.
15 Stout’s response provides no substantive rebuttal, stating only that he requests the
16 opportunity to amend his complaint because he “believ[es] that he can state a cause of
17 action as against Tukwila and its Police Department and Officer Lindstrom.” (Resp. at
18 3.) The court agrees with Defendants.

19 Under the *Monell* doctrine, “a municipality cannot be held liable under section
20 1983 on a respondeat superior theory.” *Monell v. New York City Dep’t of Social Servs.*,
21 436 U.S. 658, 691 (1978). “Instead, a plaintiff can allege that the action inflicting injury
22 flowed from either an explicitly adopted or a tacitly authorized city policy.” *Vinatieri v.*

1 *Mosley*, 787 F. Supp. 2d 1022, 1034-35 (N.D. Cal. 2011) (citing *Monell*, 436 U.S. at
2 690-91; *Harris v. City of Roseburg*, 664 F.2d 1121, 1130 (9th Cir. 1981 (“Official policy
3 within the meaning of *Monell* [encompasses situations] where a municipality impliedly or
4 tacitly authorized, approved, or encouraged illegal conduct by its police officers.”)
5 (internal quotations and citations omitted) (alterations in *Harris*). “[B]ecause *Monell*
6 held that a municipality may not be held liable under a theory of respondeat superior, a
7 plaintiff must show that the municipality’s deliberate indifference led to the omission and
8 it caused the employed to commit the constitutional violation.” *Vinatieri*, 787 F. Supp.
9 2d at 1035 (citing *Gibson v. County of Washoe, Nevada*, 290 F.3d 1175, 1186 (9th Cir.
10 2002)). “In order to do so, the plaintiff must also show that the municipality was on
11 actual or constructive notice that its omission would likely result in a constitutional
12 violation.” *Id.* (citing *Gibson*, 290 F.3d 1175 at 1186; *Farmer v. Brennan*, 511 U.S. 825,
13 841 (1994)).

14 Taken together, to state a cognizable claim against the City, Mr. Stout must allege
15 “(1) that an officer employed by the [City] violated [Mr. Stout’s] rights; (2) that the
16 [City] has customs or policies that amount to deliberate indifference . . .; and (3) that
17 these policies were the moving force behind the officer’s violation of [Mr. Stout’s]
18 constitutional rights, in the sense that the [City] would have prevented the violation with
19 an appropriate policy. *See id.* at 1035 (citing *Gibson*, 290 F.3d 1175 at 1186; *Amos v.*
20 *City of Page*, 257 F.3d 1086, 1094 (9th Cir. 2001)).

21 Defendants contend that Mr. Stout “fails to present facts suggesting the City of
22 Tukwila deliberately disregarded a known or obvious consequence of its actions and that

1 such deliberate indifference was the driving force behind the allegedly defective police
2 training.” (Mot. at 9.) The court agrees. Mr. Stout alleges violations of his civil rights
3 against Mr. Backus, but does not make any factual allegations about any City action,
4 omission, or policy at all, let alone one that is linked to the alleged conduct of Mr. Backus
5 and Mr. Lindstrom. (*See generally* Compl.) Mr. Stout’s factual allegations involve only
6 those two officers. (*See generally id.*) Accordingly, Mr. Stout fails to meet the second
7 and third *Monell* requirements, and the court GRANTS Defendants’ motion as to Mr.
8 Stout’s claims against the City and the Police Department.

9 **F. Officer Lindstrom**

10 Defendants argue that Mr. Lindstrom should be dismissed as a defendant because
11 Mr. Stout’s complaint does not contain any factual allegations against him “that could
12 lead to a finding of liability.” (*See* Mot. at 9.) Other than alleging that Mr. Lindstrom is
13 employed by the Tukwila Police Department, Mr. Stout’s allegations against Mr.
14 Lindstrom are limited to the following:

15 44. Defendant Officer Lindstrom and Defendant Officer Backus intentionally
16 or recklessly caused emotional distress to Plaintiff by extreme and
outrageous conduct.

17 45. Defendant Officer Backus and Defendant Officer Lindstrom’s Language
18 was clearly expressed for the purpose of insulting and verbally abusing an
already injured Plaintiff.

19 (Compl. ¶¶ 44, 45.)

20 The first allegation is a legal conclusion that the court disregards. *Iqbal*, 556 U.S.
21 662 at 678 (“[T]he tenet that a court must accept a complaint’s allegations as true is
22 inapplicable to threadbare recitals of a cause of action’s elements, supported by mere

conclusory statements.”) (citing *Twombly*, 550 U.S. at 555). Mr. Stout’s allegation regarding Mr. Lindstrom’s language and the purpose thereof is insufficient as well. Mr. Stout does not make any allegations about what that language consisted of, and without such allegations, Mr. Stout’s complaint fails to state a claim against Mr. Lindstrom.

Accordingly, the court GRANTS Defendants’ motion as to Mr. Stout’s claims against Mr. Lindstrom.

G. Leave to Amend

Having granted Defendants’ motion for judgment on the pleadings in full, the court next turns to Mr. Stout’s motion for leave to amend his complaint. (*See Resp.*; Prop. Am. Compl.) A party may amend its pleading with the court’s leave. *See id.* “The court should freely give leave when justice so requires.” *See id.* This policy “is to be applied with extreme liberality.” *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 712 (9th Cir. 2001) (quoting *Morongo Band of Mission Indians v. Rose*, 893 F.2d 1074, 1079 (9th Cir. 1990)). Rule 15’s permissive policy is not, however, without its limits, and the court must consider four factors that weigh against granting leave to amend: (1) bad faith, (2) undue delay, (3) prejudice to the opposing party, and (4) futility of the amendment. *Foman v. Davis*, 371 U.S. 178, 182 (1962); *see also Kaplan v. Rose*, 49 F.3d 1363, 1370 (9th Cir. 1994). Not all of these factors are to be weighted equally. “[I]t is the consideration of prejudice to the opposing party that carries the greatest weight.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003). The burden is on the party opposing amendment to show that they will be prejudiced by

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1 the court granting leave to amend. *DCD Programs, Ltd.*, 833 F.2d 183, 187 (9th Cir.
2 1987) (citing *Beeck v. Aqua-slide 'N' Dive Corp.*, 562 F.2d 537, 540 (8th Cir. 1977)).

3 Here, Mr. Stout “does not seek to add new causes of action.” (Resp. at 3.)
4 Instead, he seeks to add “information” to his complaint that was “provided to defendants
5 in initial disclosures.”⁴ (*Id.*) Mr. Stout’s amended complaint alleges that Mr. Backus
6 told Mr. Stout “you need to come outside” without saying why. (Prop. Am. Compl.
7 ¶ 26.) Subsequently, after talking with Mr. Backus for 10 to 15 minutes, Mr. Backus
8 “stepped towards Plaintiff and reached for Plaintiff’s right wrist and grabbed it and
9 Plaintiff pulled away,” told Mr. Backus “[y]ou assaulted an officer,” grabbed Mr. Stout,
10 and threw him on the floor. (*Id.* ¶¶ 34-36.) Mr. Backus “landed on top of” Mr. Stout,
11 twisted his arm behind his back, and twisted Mr. Stout’s shoulder, causing him pain. (*Id.*
12 ¶ 36.) Mr. Backus then began punching Mr. Stout, hitting him “in the back and side.”
13 (*Id.*) Mr. Stout said “you’re hurting my shoulder.” (*Id.*) Mr. Lindstrom then came into
14 the restaurant, at which point Mr. Backus asked Mr. Lindstrom for handcuffs. (*Id.* ¶ 37.)
15 Mr. Stout alleges that “both Backus and Lindstrom told [Mr. Stout] to ‘[s]hut up, you
16 little pussy.’” (*Id.* ¶ 38.) Mr. Stout alleges that he received medical attention from a fire
17 department paramedic before being transported to jail. (*Id.* ¶¶ 40-44.) He further alleges
18 that he was never told why he was arrested. (*Id.* ¶ 43.) He alleges he was charged with

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20 ⁴ Mr. Stout failed to include a copy of the proposed amended complaint that indicates “on
21 the proposed amended pleading how it differs from the pleading that it amends by bracketing or
22 striking through the text to be deleted and underlining or highlighting the text to be added” in
accordance with Local Civil Rule 15. See Local Civil Rules W.D. Wash. LCR 15. The court
considers Mr. Stout’s proposed amended complaint in this instance. However, the court cautions
Mr. Stout and his counsel that the court will strictly enforce the local civil rules going forward.

1 assault in Tukwila Municipal Court, but the charge was dismissed. (*Id.* ¶ 51.) Mr. Stout
2 adds two additional allegations against the City:

3 47. The arrest of Plaintiff was made in a manner consistent with Tukwila
4 Police Department Policy.

5 48. The arrest of Plaintiff was made in a manner consistent with the training
6 that Officers Backus and Lindstrom received through the Tukwila Police
7 Department.

8 (Compl. ¶¶ 47-48.)

9 Defendants argue that Mr. Stout should be denied leave to amend on two primary
10 grounds: (1) Plaintiff's proposed amendment would be futile, and (2) Mr. Stout knew the
11 facts surrounding his proposed amendments when he filed his original complaint. (*See*
12 Reply at 3-4 (citing *Acri v. Int'l Ass'n of Machinists & Aerospace Workers*, 781 F.2d
13 1393, 1398-99 (9th Cir. 1986) ("We have also noted that late amendments to assert new
14 theories are not reviewed favorably when the facts and the theory have been known to the
15 party seeking amendment since the inception of the cause of action.") (affirming district
16 court's denial of leave to amend where plaintiff's attorney admitted that plaintiffs' delay
17 in bringing a new cause of action "was a tactical choice because he felt that the causes of
18 action already stated were sufficient" and allowing amendment would prejudice the
19 opposing party because of the necessity for further discovery)).) The City does not argue
20 that it would be prejudiced by amendment. (*See generally* Reply.)

21 First, the court finds that Mr. Stout has not acted in bad faith in seeking
22 amendment. Although Mr. Stout was aware of the allegations he seeks to add to his
complaint when he originally filed suit, unlike the plaintiff in *Acri*, there is no evidence

1 that Mr. Stout deliberately left the allegations out as a “tactic,” Mr. Stout does not seek to
2 add any new claims, and the City does not contend that Mr. Stout’s amended complaint
3 would require additional discovery. *See Acri*, 781 F.2d at 1398-99.

4 Second, the court finds no undue delay; Mr. Stout sought leave to amend prior to
5 the deadline to seek leave. (*See* Resp. (filed on September 23, 2019); Sched. Order (Dkt.
6 # 10) at 1 (setting amended pleadings deadline for October 23, 2019).) Third, Defendants
7 do not argue that they would be prejudiced by amendment, and the court does not find
8 prejudice. (*See generally* Reply.)

9 Fourth, the court concludes that amendment is not futile as to Mr. Stout’s false
10 arrest and 42 U.S.C. § 1983 claims against Mr. Backus and Mr. Lindstrom. Mr. Stout’s
11 proposed amended complaint alleges that Mr. Backus violently attacked and arrested him
12 without probable cause and without telling Mr. Stout why he was being arrested. (*See*
13 Prop. Am. Compl. ¶¶ 26-51.) Accordingly, the court GRANTS Mr. Stout leave to amend
14 his complaint in the form of his proposed amended complaint.⁵ (*See* Dkt. # 13-1.)

15 **H. Claims Dismissed with Prejudice**

16 Although the court grants Mr. Stout leave to amend his complaint, and finds that
17 he states cognizable false arrest and 42 U.S.C. § 1983 claims against Mr. Backus and Mr.
18 Lindstrom, even Mr. Stout’s proposed amended complaint fails to cure the deficiencies

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20 ⁵ Mr. Stout’s proposed amended complaint contains claims that the court dismisses with
21 prejudice in this order. *See infra* § IV.H. For the sake of convenience, and because the parties
22 are nearing the dispositive motions deadline, the court allows Mr. Stout to file his amended
complaint on the docket but emphasizes that the claims dismissed with prejudice in this order
remain dismissed with prejudice.

1 with respect to his IIED claim, his claims against the City, and his claims against the
2 Police Department. Accordingly, the court DISMISSES with prejudice the latter claims.

3 1. IIED

4 Mr. Stout's proposed amended complaint alleges facts under which Mr. Backus
5 may have engaged in "outrageous and extreme conduct," and "intentional or reckless
6 disregard of the probability of causing emotional distress." *See Steinbock*, 269 P.3d at
7 282. However, Mr. Stout's proposed amended complaint does not allege any facts
8 showing that Mr. Stout suffered "severe emotional distress" in addition to physical injury
9 as a result of Mr. Backus's conduct. *See id.* Therefore, Mr. Stout's allegations against
10 Mr. Lindstrom do not state a claim for IIED.

11 2. Claims Against the City and Police Department

12 Mr. Stout's proposed amended complaint does not cure the deficiencies with
13 respect to his claims against the City and the Police Department. Mr. Stout seeks to add
14 the following allegations:

15 47. The arrest of Plaintiff was made in a manner consistent with Tukwila
16 Police Department Policy.

17 48. The arrest of Plaintiff was made in a manner consistent with the training
18 that Officers Backus and Lindstrom received through the Tukwila Police
Department.

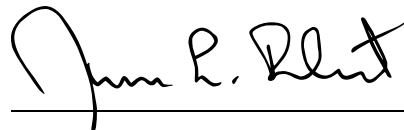
19 (Prop. Am. Compl. ¶¶ 47-48.) The court need not accept as true a legal conclusion
20 presented as a factual allegation. *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at
21 550). That is what Mr. Stout's new allegations against the City and the Police
22 Department amount to. Additionally, the proposed new allegations do not meet Rule 8's

1 pleading requirements with respect to a *Monell* claim. *See Vinatieri*, 787 F. Supp. 2d at
2 1034-35; *Monell*, 436 U.S. at 690-91. They do not tending to show that the training Mr.
3 Backus and Mr. Lindstrom received amounted to “deliberate indifference,” allege no
4 details about what the training consisted of, and fail to allege the existence of any specific
5 “customs or policies” that were the “moving force” behind the alleged violations. (*See*
6 *generally id.*) Accordingly, the court DISMISSES with prejudice Mr. Stout’s claims
7 against the City and the Police Department.

8 IV. CONCLUSION

9 The court GRANTS Defendants’ motion for judgment on the pleadings (Dkt.
10 # 12) and GRANTS Mr. Stout’s motion for leave to amend his complaint (Dkt. # 13) in
11 the form Mr. Stout submitted it on the docket (Dkt. # 13-1). The court DISMISSES with
12 prejudice (1) Mr. Stout’s first cause of action for intentional infliction of emotional
13 distress, and (2) all of Mr. Stout’s claims against Defendants City of Tukwila and
14 Tukwila Police Department. The court ORDERS Mr. Stout to file his amended
15 complaint no later than fourteen (14) days from the date of this order.

16 Dated this 27th day of November, 2019.

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19 JAMES L. ROBART
20 United States District Judge
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22